

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2001-000790

02/21/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

ANICA PACHECO PARKER

v.

CHRISTINA LOUISE MARTIN

TODD K COOLIDGE

REMAND DESK CR-CCC
TEMPE JUSTICE CT-EAST
FINANCIAL SERVICES-CCC

MINUTE ENTRY

EAST TEMPE JUSTICE COURT

Cit. No. #2005373

Charge: A. DUI ALCOHOL
B. DUI ABOVE .10

DOC: 11/30/00 DOB: 03/25/73

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on January 22, 2003. This Court has considered and reviewed the record of the proceedings from the East Tempe Justice Court, the exhibits made of record, the Memoranda and oral arguments from counsel.

The only issue presented on appeal is whether the trial judge abused his discretion in denying Appellant's Motion to Suppress/Motion to Dismiss, based upon the failure of the State to preserve a breath sample for independent testing by Appellant. The trial judge denied this

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motion after oral argument on August 31, 2001. This Court concludes that the trial judge did not err in denying Appellant's Motion to Suppress for the reason that Arizona law does not require a breath sample be preserved for the accused when the Intoxilyzer machine utilized to measure breath alcohol content.

In this case, the State was unable to satisfy the statutory method of admissibility pursuant to A.R.S. Section 28-1323 as the foundational prerequisite for the admissibility of the results of the Intoxilyzer test. However, the trial judge found that the State would be able to admit the results of the Intoxilyzer machine pursuant to the Rules of Evidence method. The State is not required to preserve a separate breath sample for an accused when the Intoxilyzer 5000 machine is utilized to measure breath alcohol content.¹ The evidence presented in this case indicated that the Intoxilyzer 5000 was operating in a reliable manner. Therefore, a separate breath sample for the accused was not required. This Court, therefore, concludes that the trial judge did not err in denying Appellant's Motion to Suppress.

IT IS THEREFORE ORDERED affirming the judgments and guilt of sentences imposed by the East Tempe Justice Court.

IT IS FURTHER ORDERED remanding this case back to the East Tempe Justice Court for all further and future proceedings in this case.

¹ Moss v. Superior Court, 175 Ariz. 348, 857 P.2d 400 (App. 1993).
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